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In the
Supreme Court of the United States

UNITED STATES DEPARTMENT OF THE TREASURY,
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS,
Petitioners,

v.

CITY OF CHICAGO,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF *AMICI CURIAE* OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, AMERICAN SOCIETY OF NEWSPAPER EDITORS, NATIONAL PRESS CLUB, AND SOCIETY OF PROFESSIONAL JOURNALISTS IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICI CURIAE*[1]

The Reporters Committee for Freedom of the Press is a voluntary, unincorporated association of reporters and editors that works to defend the First Amendment rights and freedom of information interest of the news media. The Reporters Committee has provided representation, guidance and research in First Amendment and Freedom of Information Act litigation since 1970.

The American Society of Newspaper Editors is a professional organization of more than 800 persons who hold positions as directing editors of daily newspapers in the United States and Canada. The purposes of the Society include assisting journalists and providing an unfettered and effective press in the service of the American people.

The Society of Professional Journalists is a voluntary nonprofit journalism organization representing every branch and rank of print and broadcast journalism. SPJ is the largest membership organization for journalists in the world, and for more than 90 years, SPJ has been dedicated to encouraging a climate in which journalism can be practiced freely, fully and in the public interest.

National Press Club, established in 1908, is an organization of journalists and communicators in Washington, D.C., and around the world. It advocates on behalf of First Amendment, press freedom and press access issues, and works to advance the professional standards of journalists.

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[1] Pursuant to Sup. Ct. R. 37.6, counsel for *amici curiae* declare that they authored this brief in total with no assistance from the parties. Additionally, no individuals or organizations other than the *amici* made a monetary contribution to the preparation and submission of this brief. Written consent of all parties to the filing of the brief *amici curiae* has been filed with the Clerk pursuant to Sup. Ct. R. 37.3(a).

Amici curiae's interest in this case is in preserving public access to federal government records, particularly those that may be used by the media to expose ATF actions related to the regulation of firearms, to the light of public scrutiny.

Congress compels federal government accountability, in part, through the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, which requires agencies to disclose the records they use in the course of their business unless one of nine narrowly construed exemptions applies. Thus, *amici* submit this brief in support of the City of Chicago's argument that exemptions 7(C) and 7(A) of the FOIA do not apply to the information requested by the city from the Bureau of Alcohol Tobacco and Firearms ("ATF").

SUMMARY OF THE ARGUMENT

This brief urges the Court to affirm the Seventh Circuit's opinion.

The Freedom of Information Act is a disclosure statute meant to promote government accountability. Journalists have used information that the ATF currently proposes to withhold to shed light on the internal operations of the Bureau of Alcohol Tobacco and Firearms ("ATF"). Using the Trace and Multiple Sales databases, reporters have frequently written stories outlining how legally purchased guns ended up being used by criminals to commit crimes. This has directly benefitted the public.

Moreover, any denials of information based on exemptions to the FOIA must be narrowly construed — something that was not done in this case. By proposing these wide-ranging redactions, the ATF is going well beyond the mandate given to it by the FOIA exemptions to withhold information.

The database information sought here does not raise any privacy or law enforcement issues. The privacy interest in owning guns is minimal while at the same time, the public has a great interest in knowing how guns are bought and sold in their communities. Moreover, the ATF has not demonstrated that any law enforcement investigation is imperiled by the release of this info.

Finally, in light of recent legislation, *amici* urge this court to use this opportunity to clarify its standards regarding the purposes of disclosure that it enunciated in *U.S. Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989).

ARGUMENT

I. Access to the ATF databases at issue in this case is consistent with one of the core purposes of the Freedom of Information Act — to promote government accountability through the maximum disclosure of government information.

A. The public has a strong interest in knowing whether the ATF adequately regulates the sale of firearms.

The purpose of the FOIA was "to establish a general philosophy of full agency disclosure." S. Rep. No. 813, 89th Cong. 1st Sess. 3 (1965); see also *County of Madison v. United States Department of Justice*, 641 F.2d 1036, 1040 (1st Cir. 1980).

President Lyndon Johnson acknowledged Congress' intent to promote government accountability when he signed the FOIA:

> This legislation springs from one of our most essential principles: a democracy works best when the people have all the information that the security of the Nation permits. No one should be able to pull the curtains of secrecy around decisions which can be revealed without injury to the public interest.

Statement by the President Upon Signing Bill Revising Public Information Provisions of the Administrative Procedure Act, Weekly Comp. Pres. Doc. 895 (July 4, 1966).

This Court has recognized lawmakers' intent that the FOIA was enacted to break down the wall of government

secrecy and promote accountability. It held that the FOIA was enacted "[t]o make crystal clear the congressional objective, to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny." *Department of Air Force v. Rose*, 425 U.S. 352, 361. (1976) (*Internal quotes omitted*)

Further, this Court has recognized that the FOIA enables citizens to act as watchdogs, noting that the Act "seeks to permit access to official information long shielded unnecessarily from public view and attempts to create a judicially enforceable public right to secure such information from possibly unwilling official hands." *EPA v. Mink*, 410 U.S. 73, 80 (1973). The FOIA is crucial in promoting an informed citizenry — a virtue vital to a functioning democracy and to preventing government corruption. *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). This view is consistent with this Court's interpretation of the "purpose" of the FOIA in a case where records were denied. *U.S. Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 773 (1989).

The FOIA should serve the public's interest in government accountability, and enable the public (represented in this case by the City of Chicago) to evaluate the ATF's performance.

B. Journalists have used information from the Trace and Multiple Sales databases to uncover shortcomings in both the ATF's and other law enforcement agencies' operations.

Reporters have used the Trace and Multiple Sales databases now being denied to identify shortcomings in federal

and local law enforcement efforts (or lack of effort) to control sales and resales of guns. Reporters have examined the identities of gun dealers and serial numbers of weapons to show the public how criminals get guns, how the ATF has and has not taken action to prevent that from happening, how local law enforcement agencies have sold weapons used in crime with little or no intercession by the ATF, and what crimes have been committed using these weapons.

For example:

CBS Evening News' Eye on America in 1999 used gun serial numbers and dealer information, now being withheld by the ATF, to show that law enforcement agencies across the country sold or traded tens of thousands of their weapons — everything from handguns to machine guns — to gun dealers, who then resold them. From its copy of the ATF's firearms trace database released through the FOIA, CBS showed that since 1990, more than 3,000 former police guns have been connected to crimes, including 293 homicides, 301 assaults and 279 drug-related crimes. The report relied heavily on comparatively up-to-date gun serial number, weapon type, and recovery location information that the ATF is now refusing to release. This report won the Alfred I. Dupont Columbia University Award for Excellence in Broadcast Journalism. *Miami-Dade County's Restrictions on Selling Old Police Department Guns Being Violated by Contractors,* CBS Evening News, Oct. 12, 1999, *available in* LEXIS, News Group File — All.

After the CBS series aired, law enforcement agencies in Miami, St. Louis, Irving, Tex., and Detroit stopped selling used police weapons. Rep. Rod Blagojevich, (D-Ill.) introduced legislation providing $10 million for new police firearms. To qualify for funds under his bill, a police department would have been required to destroy rather than sell its old guns. H.R. Rep. No. 3209, 106th Cong. 1st Sess. (1999)

In November 1999, *The Washington Post* showed how weapons sold by the Washington, D.C., Police Department ended up in the hands of criminals. Reporters used serial numbers and gun-type information to demonstrate that the ATF had not traced the sale of police guns that ended up in the hands of criminals, that it was apparently unaware of the practice, and that its data on police gun sales was fragmentary and flawed. Barbara Vobejda et al., *Recycled D.C. Police Guns Tied to Crimes,* WASH. POST, Nov. 12, 1999 at A1. One day before the story ran, the District of Columbia's Metropolitan Police Department, in anticipation of the news story, announced that it would no longer sell its used weapons The ATF is not providing information used in that reporting today.

The *Dayton Daily News* used serial numbers and names of dealers provided in the Multiple Sales and Trace database to show that in one year, more than 1,000 guns used in crimes across the nation came from Ohio and that the state ranked fifth among states supplying those guns. Nonetheless, those newspaper reported, ATF agents in Ohio were among the states least likely to refer gun cases for prosecution and that, in a five-year period, the number of gun cases referred for prosecution dropped by half. The reporters were able to follow sales by individuals with no criminal records to persons who used the guns to commit crimes. The series won First Place for Investigative Reporting from the Inland Press Association (2000), and the Ohio Associated Press (2001). It was also given the Award of Excellence (First Place) from the Cincinnati Society of Professional Journalists for Enterprise/Database Reporting in 2001, and it won Second Place for Best Use of Public Records from the Ohio Society of Professional Journalists in 2001. Mike Wagner et al, *Ohio :*

The Gunrunner's Paradise, DAYTON DAILY NEWS, Dec. 10, 2000 at A1.

If current ATF policy had been in place denying weapon recovery locations, dealer identification numbers and gun serial numbers, the *Daily News* could not have written its series.

In 1999, when ATF still released names of gun dealers, Fox News in Chicago showed that one-tenth of guns traced by local law enforcement authorities as possibly involved in crimes came from one gun shop and that neither local authorities nor the ATF had been able to shut down a dealer who supplied illegal guns used in Chicago crimes. *The Gun Runners*, Fox News WFLD Chicago television broadcast, Nov. 10, 1999.

If the court allows the ATF to withhold this information, reporters will not be able to do timely reporting about control of gun sales and the spread of weapons for criminal uses — reporting that in the past has triggered remedial measures. The public interest is clearly served when ATF Trace and Multiple Sale database information remains as widely available and accessible as possible.

II. Exemptions to the Freedom of Information Act are to be narrowly construed so as not to overburden the primary purpose of the Act — public disclosure.

The world can be a dangerous and frightening place. It is thus unrealistic to expect that the government would never have cause to withhold information from the public. Congress accounted for those rare occasions that would merit withhold-

ing of information in the nine exemptions codified in the FOIA. 5 U.S.C. § 552. As the legislative history indicates, Congress expected these exemptions to be interpreted with an eye on assuring heightened access to information. S. Rep. No. 813, 89th Cong., 1st Sess. 3 (1965); H.R. Rep. No. 1497, 89th Cong. 2d Sess. (1966).

Because the primary purpose of the FOIA is access, any exemptions must be narrowly construed. *Department of the Air Force v. Rose*, 425 U.S. 352, 361 (1976). Moreover, when "the scope of an exemption is unclear or ambiguous...[it is to be interpreted] in a manner that favors disclosure." *Young v. Rice*, 826 S.W. 2d 252, 254 (Ark. 1992). Consistent "with the Act's goal of broad disclosure, these exemptions have been consistently given a narrow compass," *Department of Justice v. Tax Analysts*, 492 U.S. 136, 151 (1989).

The information from the Multiple Sales and Trace databases that the ATF seeks to keep hidden behind a veil of government secrecy fits under none of the exemptions set out by Congress in the FOIA. The information sought by the City of Chicago raises neither privacy concerns under exemption 7(C) nor law enforcement concerns under exemption 7(A).

Conversely, the release of this information greatly benefits the public. As noted above, several investigative reporters used these records before the ATF decided to deny access to them to write stories that have exposed major deficiencies within the ATF. Various reports have exposed the ATF's poor data management, its inability to generate criminal cases in major gun-smuggling states and the agency's inability to prevent the sale of former police firearms to criminals.

A. A narrow reading of FOIA Exemption 7(C) requires the ATF to release the records sought in this litigation.

The FOIA permits the federal government to exempt from disclosure "records or information compiled for law enforcement purposes . . . to the extent that the production . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C). In order to invoke this exemption, a federal government agency must prove first that a privacy interest is implicated by the release of the records, and second, if there is such a privacy interest, that it is not outweighed by the public interest served by the release. *Reporters Committee*, 489 U.S. at 762. The ATF has met neither of these burdens.

1. There is no expectation of privacy attached to the purchase or sale of a handgun.

In an effort to stem the number of guns used in crime, the firearms industry in America historically been subject to a great degree of government regulation and scrutiny. Gun buyers have traditionally been forced to provide high levels of personal information to the government. Moreover, when they purchase weapons, buyers are put on notice that this information will not be kept private but shared with various state and local law enforcement agencies. 18 § U.S.C. 922(s) & (t) (2000).

The purchaser of a firearm does not have an expectation of privacy in the highly regulated transaction because it is not a private transaction. *Center to Prevent Handgun Violence v. U.S. Dept. of Treasury*, 981 F.Supp. 20, 23-24 (D.D.C.. 1997). The Gun Control Act requires that the transaction for the sale of a firearm be recorded and every dealer is required

to make business records available for government inspection. All purchasers are by definition put on notice that their name and address will be reported to state and local authorities and the ATF. *United States v. Biswell*, 406 U.S. 311, 316 (1972).

In the years since *Biswell* was decided, government regulation has only increased. All firearms purchases are evaluated by the relevant federal, state or local bodies. 18 U.S.C. § 922(s) & (t) (2000). As the City of Chicago tells us in its brief, Multiple purchases must be reported to federal, state and local authorities, without any statutory restriction on the further dissemination or use of that information; and the records of all other transactions are not only subject to regulatory scrutiny during compliance inspections and regulatory investigations, but also must be provided to ATF when it conducts a trace. *Brief for Respondent in Opposition On Petition for a Writ of Certiorari*, at 9-10.

Gun purchasers are put on notice that the information they provide the government will be reported to various state and local law enforcement agencies. Moreover, the information the City is requesting involves mostly information regarding those who purchased guns or individuals associated with a traced weapon. Buying several guns in one week or purchasing a weapon that would later be traced by police is "at most discrete information about commercial transactions in a closely regulated industry," in which there can be no expectation of privacy. *Id.* at 14.

Further, the benign nature of the database information in question raises minimal privacy concerns. For there to be an invasion of privacy, "the legislative history is clear," the "threats to privacy interests [must be] more palpable than mere possibilities." *Department of Air Force*, 425 U.S. at 380. To infringe on a citizen's privacy interests, information that

is released must be "inculpatory or inflammatory...[in addition] [a]n agency may not exempt from disclosure all of the material in an investigatory record solely on the grounds that the record includes some information which identifies a private citizen or provides that person's name and address." (Internal quotations omitted) *Center to Prevent Handgun Violence*, 981 F.Supp. at 23-24.

In this case, the information sought is limited to names of persons from whom the firearms were recovered, and those present at the crime scenes. It does not identify individuals as a suspect, interviewee or witness in a criminal investigation. Because of the ambiguity, privacy concerns are minimal. Guesswork on the part of the FOI requester as to the involvement of the named person in a crime is insufficient to result in "inculpatory or inflammatory" release of information.

Release of the information itself can in no way be considered inflammatory. It merely reveals the names of people associated with a firearm that the police later traced, perhaps many years after the gun has left the buyer's possession. Also, information from the Multiple Sales database shows only that an individual bought more than one gun in one week. This is hardly data that in itself can be considered embarrassing, suggesting only that the named individual was at one point somehow associated with a particular gun.

It should also be noted that there are no privacy concerns raised by releasing the names of gun dealers. The names of gun dealers — businesspersons who sold guns which were eventually traced — presents at most a *de minimus* privacy interest. In *Washington Post Co. v. United States Department of Agriculture.*, 943 F. Supp. 31, 35 (D.D.C. 1996), the court holds that "a business entity has no personal privacy interest." *(Internal quotes omitted)*

2. The public's interest in having access to information contained in the ATF databases substantially outweighs any privacy interests that may exist.

Even assuming the sellers and purchasers of handguns had a privacy interest in the two databases at issue in this litigation, such a privacy interest is outweighed by the public interest served by its release.

The FOIA's central goal, as interpreted by this court, is to advance "the citizens' right to be informed about what their government is up to." If the government is to be forced to release information, that interest must outweighs any privacy concern that may exist. *Reporters Committee*, 489 U.S. at 773.

Amici strongly disagree with the ATF's claims that release of the names and addresses of gun buyers could not assist the public in determining whether ATF has adequately supported local authorities or to evaluate the agency's performance. As noted above in the examples of news stories that used these records, it is clear that the information sought in this case contributes "significantly to public understanding of the operations or activities of the government." *Id.* at 775.

Denials of the type imposed on the City to requests of information have had a chilling effect on journalists who wish to keep the activities of government agencies open to the sharp eye of public scrutiny. In Virginia, for example, local law enforcement has since 1997 operated Project Exile, a law enforcement initiative that seeks to reduce gun violence by giving stiffer sentences to felons who commit gun violations. In hopes of reducing violent crime, the state has implemented a regime whereby individuals with criminal records who are in illegal possession of firearms face a minimum five-year jail

sentence. Local law enforcement working in tandem with the ATF have claimed great success in implementing this program. See, for example, David Schiller, *Project Exile* http://www.vahv.org/Exile/ (visited on: Jan. 29, 2003) claiming that the "aggressive, innovative, and creative approach" used by the program has helped reduce crime.

However, journalists cannot check or confirm Project Exile's true effectiveness under the ATF's current policy. If the names of purchasers, possessors and associates were released, journalists could check this listing against court records to see whether prosecutors have in fact pursued weapons offenders in an aggressive and efficient manner. Journalists could see what proportion of weapons violations were not being prosecuted. With the ATF currently imposing an indefinite redaction on the release of names, any meaningful present analysis becomes impossible, making evaluation of both the agency and local law enforcement's operations impossible.

The ATF has a "strategic goal" of restricting the huge volume of weapons transferred every year into the hands of criminals. As the agency states publicly on its Web site, it strives to "continue to forge and strengthen partnerships to prevent and disrupt the unlawful diversion of firearms to criminals and juveniles from both legal and illegal sources. [It seeks to] Identify, investigate, and stop illegal firearms traffickers... [and] promote comprehensive firearms tracing by all law enforcement agencies and continue to expand the use of technology to trace crime guns, identify trends, develop leads and share critical information to prevent illegal firearms trafficking." *About ATF: Strategic Goals*, (visited on: Jan. 29, 2003) http://www.atf.treas.gov/about/stratplan.htm.

This is a laudable goal that can only be achieved if the

public, including the City of Chicago, has the information it needs to be an active partner. Access to the restricted database information at issue in this case lets the public know whether the ATF is doing its job.

B. A narrow reading of Exemption 7(A) requires the ATF to release the database information because the release would not compromise law enforcement proceedings.

Exemption 7(A) allows the federal government to withhold information if the information sought is "compiled for law enforcement records... [and] could reasonably be expected to interfere with enforcement proceedings . . . ." 5 U.S.C. § 552(b)(7)(A) (2000).

The types of information that the ATF is withholding for a five-year period under this exemption include information identifying the law enforcement agency requesting the trace, weapon serial numbers and firearm dealer identification data.

As this Court held in *Robbins Tire*, 437 U.S. at 224, when Congress enacted Exemption 7(A), it "recognized that law enforcement agencies had legitimate needs to keep certain records confidential, lest the agencies be hindered in their investigations or placed at a disadvantage when it came time to present their case. Foremost among the purposes of this Exemption was to prevent 'harm [to] the Government's case in court.'" This Court emphasized that files could not be released unless the "Government's case in court — a concrete prospective law enforcement proceeding — would be harmed by the premature release of evidence or information . . . ." *Id.* at 232. This standard is clear. Investigatory information may be withheld by the federal government only if it harms an

"actual, contemplated enforcement proceeding."

Moreover, as the court of appeals correctly noted in this case, the harm caused to the investigation must be real. Public disclosure of information that "could result in destruction of evidence, chilling and intimidation of witnesses, and revelation of the scope and nature of the Government's investigation," can be withheld. *Solar Sources, Inc. v. United States,* 142 F.3d 1033, 1039 (7th Cir. 1998).

Courts, historically have read the 7(A) Exemption very narrowly. Even when there is an ongoing law enforcement investigation, the federal government must still release information having to do with the portion of the investigation that already has been closed, as long as the information does not "interfere in a palpable, particular way" with that part of the investigation that is still open. *North v. Walsh,* 881 F.2d 1088, 1100 (D.C. Cir. 1989). In other words, even when there are ongoing investigations, the power to deny the release of information must be used lightly, and only insofar as the release of information does not harm the future of an ongoing investigation.

By denying important database information under Exemption 7(A) for a five-year period, regardless of whether there is an actual or foreseeable investigation in progress, the ATF is ignoring the nuanced, deliberate approach adopted by this and lower courts.

The ATF is not denying the release of information where "an actual, contemplated enforcement proceeding" exists. *Robbins Tire*, 437 U.S. at 232. Instead it denies all of the database categories in question for a five-year period. This heavy-handed approach has the ATF using a chainsaw to slice the public release of information where a surgeon's scalpel would suffice.

The ATF has so far failed to present *any* evidence that a *concrete* pending law enforcement investigation would be threatened by the release of the information in question. Instead, as the court of appeals correctly noted, the ATF has only presented the court with "hypothetical scenarios," which "did not convince...[the court] that disclosing the requested records puts the integrity of any possible enforcement proceeding at risk." *City of Chicago v. U.S. Dept. of Treasury*, 287 F.3d 628, 634 (7th Cir. 2002). The court correctly found that the five-year redaction period for the information in question was "not based on any concrete knowledge of whether an investigation is actually contemplated or ongoing."

Moreover, the ATF has been unable to show that release of *any* of this information would threaten any real prospective or ongoing investigation. In fact, as the court of appeals correctly noted, "the multiple sales data reveals nothing about any potential or ongoing investigation." *Id.* at 635.

Even if the data in question exposed elements of an ongoing investigation, the ATF would still have the burden of showing that the information released would harm the parts of the investigation that are still open. By failing to identify actual or ongoing law enforcement investigations that may be harmed by release of the information in question, the ATF falls far short of meeting this court's standard originally set in *Robbins Tire,* 437 U.S. at 232.

Finally, *amici* note that throughout the late 1990s, the ATF released much of the database information that it proposes to keep from the public for a five-year period. As noted above, numerous journalists who had access to this information in the 1990s were able to report on gun trafficking problems and the ATF's inability to adequately deal with

them. The ATF has not demonstrated that any of these news reports — some of which were based on up-to-date trace location, gun dealer and serial number information — jeopardized an ongoing or prospective law enforcement investigation.

III. In light of the 1996 Amendments to the FOIA, the Court should take this opportunity to clarify its opinion in *U.S. Department of Justice v. Reporters Committee for Freedom of the Press*.

In *Reporters Committee*, this Court found that to outweigh any privacy concerns that may exist, information that is requested must expose federal government activities, and contribute significantly to public understanding of the operations or activities of the government. *Reporters Committee*, 489 U.S. at 773. While the balancing test set by the court in *Reporters Committee* was clear, the Electronic Freedom of Information Act ("EFOIA") signed into law in 1996 attempted to clarify Congress' intent on this issue. (Pub. L. No. 104-231, § 3, 110 Stat. 3048 (1996) (amending 5 U.S.C. § 552)).

In the "Findings and Purposes" of the Act, Congress found that:

> (1) [T]he purpose of section 552 of title 5, United States Code, popularly known as the Freedom of Information Act, is to require agencies of the Federal Government to make certain agency information available for public inspection and copying and to establish and enable enforcement of the right of any person to obtain access to the records of such agencies, subject to statutory exemptions, for any *public or private purpose*. [*emphasis added*] (Pub. L. No. 104-231, § 2(a)(1), 110 Stat. 3048, 3049 (1996).)

While *Reporters Committee* stands for the notion that information that is released must shed light on the federal government's actions to outweigh any privacy concerns, by suggesting that information can be released for any "public or private purpose," Congress subsequently has applied a less restrictive standard.

Sen. Patrick Leahy (D-Vt.), a sponsor of the EFOIA, specifically noted in a report published by the Judiciary Committee on the 1996 EFOIA that the court's reasoning in *Reporters Committee* did not reflect Congressional intent:

> The reasoning of the Supreme Court in *Department of Justice v. Reporters Committee* and the *United States Department of Defense v. Federal Labor Relations Authority*, 510 U.S. 487 (1994) analyzed the purpose of the FOIA too narrowly. The purpose of the FOIA is not limited to making agency records and information available to the public only in cases where such material would shed light on the activities and operations of Government. Efforts by the courts to articulate a 'central purpose' for which information should be released imposes a limitation on the FOIA which Congress did not intend and which cannot be found in its language, and distorts the broader import of the Act in effectuating Government openness."

S. Rep. No. 104-272, at 23-32 (1996).

Writing before the passage of the 1996 EFOIA, Justice Ginsburg concurred with Sen. Leahy's analysis:

> The *Reporters Committee* "core purpose" limitation is not found in FOIA's language. A FOIA requester need not show in the first instance that disclosure would serve any public purpose, let alone a "core purpose" of "open[ing] agency action to the light of public scrutiny" or advancing "public understanding of the operations or activities of the government." Instead, "[a]n agency must disclose agency records to any person ... 'unless [the records] may be withheld pursuant to one of the nine enumerated exemptions listed in § 552(b).'"

United States Department of Defense v. Federal Labour Relations Authority, 510 U.S. 487, 507-508 (1994) (Ginsburg, J., concurring).

In light of the 1996 EFOIA, and concerns raised by Justice Ginsburg and others, see Martin E. Halstuk & Charles N. Davis, *The Public Interest Be Damned: Lower Court Treatment of the Reporters Committee "Central Purpose" Reformulation*, 54 ADMIN. L. REV. 984 (2002), the court should take this opportunity to clarify whether the "central purpose test" set out by *Reporters Committee* is valid.

CONCLUSION

Amici Curiae ask this Court to uphold the judgment of the Court of Appeals.

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